

**Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store and Retail Store Employees Union Local 322, affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC. Case 17-CA-9307**

July 22 1981

### DECISION AND ORDER

On April 9, 1981, Administrative Law Judge Jesse Kleiman issued the attached Decision in this proceeding. Thereafter, the General Counsel filed limited exceptions and a supporting brief, and Respondent filed cross-exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store, Neosho, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In agreeing with the Administrative Law Judge's finding that a bargaining order is unnecessary, we do not rely upon his findings with regard to the subjective impact of Respondent's unfair labor practices upon its employees or the degree of employee turnover since the occurrence of those unfair labor practices. Rather, we find that, under the circumstances present herein, our utilization of traditional remedies will suffice to insure a fair election and erase the present effects of Respondent's past misconduct.

### DECISION

#### STATEMENT OF THE CASE

JESSE KLEIMAN, Administrative Law Judge: Upon an amended charge filed in Case 17-CA-9307 on December 20, 1979, by Retail Store Employees Local 322, affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC, herein called the Union, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 17, Kansas City, Kansas, duly issued a complaint and notice of hearing on December 28, 1979, against Walter Jack<sup>1</sup> and Dixie A.

<sup>1</sup> Walter Jack Macy is also referred to herein as Jack Macy.

Macy d/b/a 7-Eleven Food Store, herein called the Respondent, alleging that the Respondent engaged in certain unfair labor practices within the meaning of Section 8(a)(1) of the National Labor Relations Act, as amended, herein referred to as the Act. On January 8, 1980, the Respondent filed an answer denying the material allegations in the complaint.<sup>2</sup>

A hearing was duly held before me in Neosho, Missouri, on April 29, 1980. At the hearing the complaint was amended, without opposition thereto, to add the allegation that on October 6, 1979, Dixie A. Macy threatened the Respondent's employees "with violence because of their membership in, support for, and activities on behalf of the Union." At the close of the General Counsel's case and at the conclusion of the hearing the Respondent moved to dismiss the complaint for failure of proof. I reserved decision on these motions. All parties were afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, to argue orally on the record, and to file briefs. Thereafter, the General Counsel and the Respondent filed briefs. In its brief the Respondent renewed its motion to dismiss the complaint for failure of proof. For the reasons hereinafter set forth, I deny the Respondent's motions to dismiss the complaint in its entirety.

Upon the entire record and the briefs of the parties, and upon my observation of the witnesses, I make the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The Respondent, a sole proprietorship, is engaged in the operation of a 7-Eleven convenience retail grocery store located at 817 Neosho Boulevard, Neosho, Missouri, under a franchise agreement from Mako, Inc.<sup>3</sup> In the course and conduct of the Respondent's business operations during the preceding 12 months, these operations being representative of its operations at all times material herein, the Respondent's gross volume of business at its store exceeded \$500,000 and also, the Respondent, in the course of its business operations within the State of Missouri, annually purchases goods and services valued in excess of \$25,000 directly from sources located outside the State of Missouri. The complaint alleges, the Respondent admits, and I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Further, the complaint alleges that at all times material herein Walter Jack Macy and Dixie A. Macy were "co-owners" of this business and had been, and were now,

<sup>2</sup> In its answer to the complaint the Respondent for "Second Defense" asserted that "[t]he NLRB is without jurisdiction over the Employer in this matter and therefore the within complaint should be dismissed." However, at the hearing the Respondent admitted that its annual gross volume of business exceeds \$500,000 which meets the Board's "jurisdictional standard" for a retail enterprise. In view thereof the Respondent made no motion to dismiss on this ground at the hearing nor in its brief filed herein.

<sup>3</sup> The parties herein stipulated that the Respondent and Mako, Inc., are separate employers.

supervisors or agents acting on behalf of the Respondent within the meaning of Section 2(11) and (13), respectively, of the Act. The Respondent admits that Walter Jack Macy and Dixie A. Macy were supervisors within the meaning of Section 2(11) of the Act but that "Dixie A. Macy is not now a supervisor or agent acting on behalf of the Employer within the meaning of Section 2(11) and Section 2(13) respectively of the Act." From the admissions of the parties and from the evidence herein, I find that the above-named persons are supervisors within the meaning of Section 2(11) of the Act, and have been and are now agents of the Respondent acting on its behalf.<sup>4</sup>

## II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and I find that Retail Store Employees Local 322, affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

The complaint alleges that the Respondent, between the dates of October 19-30, 1979, violated Section 8(a)(1) of the Act by creating an impression among its employees that their union activities were under surveillance by the Respondent; by soliciting its employees to ascertain and divulge to the Respondent the union activities, sympathies, or desires of other employees; by interrogating its employees regarding their own and other employees' union membership, activities, and sympathies; by threatening its employees that it would close its store if they selected the Union as their collective-bargaining representative; by threatening its employees with blackmail and/or violence because of their membership in, support of, and activities on behalf of the Union; by threatening an employee with reduction in working hours and adding those hours to the working hours of another employee in order to persuade that employee to withdraw his support from the Union; and by circulating among its employees a petition requesting the Union to withdraw the representation petition the Union had filed with the Board in Case 17-RC-8916. The Respondent denies these allegations.

### A. Background

Glen Conyers, a business representative for the Union, testified that in mid-October 1979 he received a telephone call from David Kersey, one of the Respondent's employees, who advised him that a majority of the employees were interested in having the Union represent

them for purposes of collective bargaining with the Respondent. He stated that he told Kersey about the advantages of union representation and requested the names and addresses of the employees so the Union could send them authorization cards to sign. Conyers related that subsequently Kersey called him again, giving him a list of the employees' names and addresses and the Union sent them each a letter with an enclosed union authorization card on or about October 16, 1979. Conyers continued that he mailed the letter and authorization cards to employees David Kersey, Rodney Stark, Brent Cotton, and Bill Burr. He added that within a few days thereafter he received the signed authorization cards back from these employees.<sup>5</sup> The evidence herein shows that David Kersey, Brent Cotton, Rodney Stark, and Bill Burr all signed authorization cards for the Union.<sup>6</sup> The evidence also shows that in October 1979, prior to its obtaining the signed authorization cards from the Respondent's employees, the Union filed a petition for certification of representative with the Board and then subsequently filed an amended petition after receipt of the employees' executed cards.

### B. The Appropriate Bargaining Unit

The complaint alleges, the parties stipulated at the hearing, and I find that the unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act consists of: All full-time and regular part-time employees at its store in Neosho, Missouri, excluding office clerical employees, guards and supervisors as defined in the Act. At the hearing the parties also stipulated that "on or about October 18, 1979, the Respondent employed six employees" who were properly includable within the unit.<sup>7</sup>

### C. The Evidence

Foster B. Young, employed by the Respondent as a store clerk,<sup>8</sup> testified that on or about October 20, 1979,

<sup>5</sup> Concerning this the testimony of David Kersey was similar in nature to that given by Conyers. Kersey testified that he had not given Conyers the names of two others of the Respondent's employees, Sterling J. Watts and Foster B. Young, because Watts was "a personal friend" of Jack Macy, the owner, and "probably not in favor of the union" and because Young had told him that "he had no opinion on the union, that it was up to the rest of us."

<sup>6</sup> Kersey, Cotton, and Stark testified that they had signed their cards on October 18, 1979. While Burr did not testify at the hearing, having left the State of Missouri for California, his sister Barbara Laswell with whom he resided while living in Neosho, Missouri, identified his signature on the authorization card in evidence herein. Burr's authorization card is dated October 19, 1979. Conyers also testified that subsequently he was present when Burr was asked by a Board agent to verify his signature on the authorization card and that Burr had acknowledged that the signature was his.

<sup>7</sup> These employees would be David Kersey, Brent Cotton, Rodney Stark, Bill Burr, Sterling J. Watts, and Foster B. Young.

<sup>8</sup> Young testified that he had been hired by Jack Macy sometime in August or September 1979 as a part-time employee for the "graveyard shift . . . 11 p.m. to 7 a.m." Young stated that he was to work two graveyard shifts per week of 8 hours each, a total of 16 hours weekly and that he had requested part-time work for the reason that he published a magazine as an additional occupation and wished to continue this work. At the time he testified herein Young was still employed by the Respondent.

<sup>4</sup> The Respondent alleges that the store was "originally operated by Jack and Dixie Macy but is now operated by Jack Macy only." The evidence shows that at all times material herein Dixie Macy, the wife of Jack Macy the owner, worked in the store. Where the employer is a small sole proprietorship, the marital relationship of itself has been deemed sufficient to lead employees to believe an employed wife speaks and acts for her husband. Particularly where her remarks and actions are consistent with those of her employer-husband and the wife spends much time at the facility, the Board has construed a wife to be part of management. *William O. Hayes, d/b/a Superior Casting Company*, 230 NLRB 1179 (1977).

at approximately 11 p.m. when he appeared for work at the store that evening he observed a Board notice posted on the door<sup>9</sup> and exclaimed, "What the hell is this?" Young stated that Jack Macy, the owner, then asked him, "Is this the first you heard about it," and after Young responded, "Yes," Macy told him that the Board had informed Macy that all the Respondent's employees, including Young, had signed a petition for the Union. Young continued:

Well he said that the store couldn't afford the union and that it was probably instigated by Bill Burr . . . that he had talked to Mako and Mako had some [bad] checks on Bill and they could take care of them and he was probably . . . the instigator of the union, of the petition for the union.<sup>10</sup>

Young testified that later on "somewhere between 4 and 5:30 a.m.," while he was reading the Board's notice, Macy came over and said, "Well, are you finding out anything new?" Young stated that he replied, "Yes, I believe they have falsified in the fact that they said I had signed a petition to get the Union in, because I did not sign a petition." Young related that Macy then stated that "they couldn't afford the union, that the store just wasn't making that much money." He added that "either that night or the next day or two" Macy asked him if he knew who had signed union authorization cards.<sup>11</sup>

Young recounted that on or about October 22, 1979, he overheard a conversation between Dixie Macy, Jack Macy's wife, and "a customer, delivery man for this area from EPF or some such initial as that"<sup>12</sup> concerning the Union, which went as follows:

The customer said, "I didn't think you could talk about the union." She said, "We can talk about it, we just can't fire anyone." And she proceeded to tell him that Mako had called Jack and told him to find out who the instigator of the union was, and they would come down and take care of him, because they had difficulty in another place and they had done what was necessary to stop it. And she also said that, of course, Jack told them, he says,

<sup>9</sup> Kersey testified that on October 19, 1979, Jack Macy had posted the Board's notice in the store which the Respondent had received in the mail along with a copy of the Union's petition filed with the Board and copies of the Board's election pamphlets, bringing it to Kersey's attention by stating "Look what we got in the mail." According to Kersey the Board's election pamphlets were "in the office" and presumably available to the employees if they wanted them.

<sup>10</sup> Kersey testified that either on October 19, 1979, or during the "few days" thereafter he had a conversation with Jack Macy during which Macy told him that the Respondent

. . . had \$47 worth of Bill Burr's bad checks written to the store. He said that he knew that Bill was on probation for writing bad checks and that if those checks were turned over to the prosecuting attorney, Mr. Bill Burr couldn't vote in jail. Mr. Macy also said, during that conversation, that he knew that Mr. Burr was for the union.

<sup>11</sup> Young testified that Macy had used the term "petition card" when he questioned him about this. His testimony was slightly confusing concerning this since he testified that Macy also used the term "petition."

<sup>12</sup> According to Young, Dixie Macy was standing behind the store counter, he was also situated behind the counter approximately "four or five feet" away, and the "customer" was standing in front of the counter directly facing across from her.

"Well, I don't want anybody to get hurt," so he wouldn't go for that.<sup>13</sup>

Young testified that in late October 1979 Dixie Macy had come into the store "to relieve" him and had placed a clipboard on the counter telling him, "Here, this is a petition to stop the union from coming in and all the other employees are going to sign it, and you can sign it if you want to." Young related that the petition stated in substance that the Respondent's employees did not want the Union, "It was a petition to withdraw the petition to get the union," and he signed it.<sup>14</sup> He continued that in or about the same time, late October 1979, Dixie Macy had initiated conversation with him "behind the counter at the 7-Eleven Store":

We were talking about the union, and Dixie asked me if there were any meetings scheduled, and I told her I didn't know and I probably wouldn't go if there was, and she said, "Well, go ahead and come back and tell us what happened."

Young added that Dixie Macy had specifically mentioned the union meetings and that he told her, "I didn't even know what union it was."

Young related that also in late October 1979, perhaps on October 29 or 30, his hours of work were reduced from approximately 40 to 18 hours weekly.<sup>15</sup> He stated that he went to see Jack Macy about this in Macy's office.<sup>16</sup> Young testified that he complained to Macy about his "cut" in hours of work and told Macy that "he had nothing to do with the union." According to Young, Macy replied that "he did that because he knew I was against the union or wasn't for it, and that Bill Burr, he

<sup>13</sup> Jim Trainer, a truckdriver for Exhibitors Film Delivery Package Express commonly known as EPD, and a witness for the Respondent, testified that he stops daily at the Respondent's store to use the telephone and "to get a Coke" and often converses with Dixie Macy if she is present in the "back room" where the telephone is located. He related that sometime in October 1979 he had a conversation with her about the Union and that the only statement she made concerning it was "that they were trying to get a union in." Trainer denied that Foster B. Young was present when this happened. On rebuttal Young identified Trainer as the "customer, deliveryman" with whom Dixie Macy had the conversation which he overheard. He testified that he had observed Trainer in conversation with Dixie Macy on a number of occasions and that he saw Trainer often in the backroom although it was "a rule that no one" is allowed to go back there except for deliveries, including customers.

<sup>14</sup> Young described the petition as a "white piece of paper, like a notebook paper without lines, just had typing on it and the lines typed there for us to sign." In lieu of the production thereof the parties herein stipulated the following: "That a petition to withdraw support of the union along the lines described by the witness was prepared by Dixie Macy and left on the counter at the store for the employees to sign."

<sup>15</sup> The Respondent posts a weekly work schedule so that the employees know what hours and days they are to work the following week, and while Young testified that he had been scheduled for 18 hours of work the evidence shows that he actually never worked less than 24 hours or more per week during this time.

<sup>16</sup> Young testified that David Kersey and Brent Cotton were in the vicinity of the office at the time this occurred. Kersey testified that Young had complained to him "about having his hours cut down . . . shortly after the time that Mr. Macy was aware of the Union." However, Kersey's testimony indicates that he did not overhear any of this conversation between Young and Macy, and Cotton's testimony makes no mention of it.

gave the hours to him to win his votes."<sup>17</sup> He added that Macy also told him that "he would add some hours to me."<sup>18</sup>

Young testified that on a number of occasions during the latter part of October 1979, Jack Macy had asked him about his feelings toward the Union and Young informed Macy that, "I didn't much care for it. As a matter of fact, if the union came in, I probably wouldn't join it. It just wasn't worth the hassle to me." He stated that Macy had reiterated his belief that the Respondent "couldn't afford the union" and in one instance had said, "Mako wouldn't allow the union to come in, that they would close the store up and burn it down before they would allow the union to get a foothold in."<sup>19</sup> He additionally testified that sometime after October 19, 1979, he had several conversations with Jack Macy concerning "inventory shortages" occurring in the store.<sup>20</sup>

David Kersey, employed by the Respondent from May 1978 until February 24, 1980, testified:

After talking with some of the other employees and finding that they had changed their minds towards the union, specifically Rodney Stark, Brent Cotton, it was decided, Brent and I talked about it and decided that we needed to have something to with-

<sup>17</sup> Young stated that the Respondent had hired two new employees in and around this time reducing "our hours some" but that he felt that this did not affect him "because mostly the ones that got my hours was Bill [Burr] . . . ." In an affidavit dated December 3, 1979, given to a Board agent during the investigatory stage of this proceeding Young had stated that "all the employees hours were decreased by eight." However, he alleged at the hearing that this was due to the hiring of these two new employees.

<sup>18</sup> As indicated hereinbefore Young had originally been hired as a part-time employee at his own request. He testified that sometime prior to October 19, 1979, Jack Macy had asked him to work full time through the winter months and Young had agreed to do so. Young stated that he had then worked between 32 and 40 hours weekly thereafter. He related that after the Union filed its petition with the Board his hours of work were reduced but he could not recall the actual number of hours he worked weekly during these weeks. Young added that in late October 1979 his work hours were increased after he had complained to Macy about the cut in hours. While Young had no independent recollection of the weekly hours he worked, on cross-examination he was shown the written work schedules for the following weeks which he assumed were correct: Week beginning October 14, 1979, 34 hours; week beginning October 21, 1979, presumably 34 hours; week beginning October [28], 1979, 34 hours; week beginning November 4, 1978, — hours; and week beginning November 11, 1979, 26 hours.

Larry Cook, "a police officer for the City of Neosho" testifying as a witness for the Respondent, stated that he had stopped at the Respondent's store one evening and Young had told him, "Well, I'm supposed to be working part time, but I have to work full right now."

<sup>19</sup> It should be noted that David Kersey, Brent Cotton, and Rodney Stark all testified that they never discussed the Union with Young and there is no evidence in the record indicating that Young ever told the other employees about his conversations with Jack or Dixie Macy or as to what he had overheard Dixie Macy say. However, Stark did testify that Young, on one occasion, had asked him about the Union's petition, "that was about all." As will be set forth more particularly hereinafter, Kersey testified that he had asked Young's permission to sign Young's name on the petition withdrawing employee support of the Union.

<sup>20</sup> Kersey testified that he and Jack Macy had various discussions concerning inventory shortages experienced by the Respondent in the store. He stated that he and Macy "staked out" the premises in a camper vehicle parked across the street from the building in the hope of catching anyone stealing merchandise from the Respondent, but without success. Police Officer Cook testified that Jack Macy had told him that the Respondent was experiencing problems with inventory shortages at the store.

draw from this union so as not to have any more trouble down at the store."<sup>21</sup>

He continued:

The discussions and conversations I had had with the other employees led me to believe that there was no chance for this union election to succeed at the store. That combined with various comments and conversations concerning threats to my future bride at the time, items about bad checks just ran together and it seemed to me at the time that the union was not a good idea for all concerned.<sup>22</sup>

Kersey stated that he had spoken to his father about the Union and his father, "manager of Pet Milk down here at Neosho" expressed the opinion that "he didn't think it was a good idea to have a union at the Seven-Eleven." However, Kersey related that this conversation took place prior to his contacting Conyers at the Union. Kersey testified that he had also spoken to either Jack or Dixie Macy concerning "how we could go about withdrawing from the union." According to Kersey, thereafter, he and Brent and Debbie Cotton prepared a petition to withdraw a petition from the retail clerks union" and he placed it in the Respondent's store for the other employees to sign, which they all did except Burr.<sup>23</sup>

Kersey testified that he had originally sought union representation for the Respondent's employees because he learned from employee Bill Burr that Burr's former employer, Consumers, was under union contract and its employees enjoyed "insurance and better pay and you have a representative to bargain for you." He stated that he then spoke to "certain employees at Consumers" who told him that they were receiving "seven or eight dollars an hour." Kersey related that thereafter he had conversa-

<sup>21</sup> Kersey testified that Rodney Stark had told him that he had changed his mind about supporting the Union, but Kersey could not remember the reason why, or if Stark had actually given any.

<sup>22</sup> Kersey related that his wife had told him that she had been informed by her friends Debbie Cotton and Janice Miller that Dixie Macy had said she would like to "kick her ass in" and that Dixie Macy had told his wife directly that "she would like to kick her ass in because she knew that her, my wife, and her step-father had started the union down at the store."

Debbie Cotton, the wife of employee Brent Cotton, testified that on or about October 24, 1979, Jack and Dixie Macy visited the Brent apartment and Dixie Macy said "she would like to kick Marcie's ass. She didn't give a reason why." She stated that thereafter she told Marcie Kersey what Dixie Macy had said because the Cottons and Kerses were friends. She added that Dixie Macy and Marcie Kersey do "not like" each other.

Marcie Kersey corroborated the testimony of both her husband David Kersey and that of Debbie Cotton. She testified that on or about October 25 or 26, 1979, she telephoned Dixie Macy "to confirm the threat." She stated that she asked Macy if it were true that she had made the above statement and Macy responded, "You've called me worse things. We know that you and your father had started the union." Marcie Kersey added that she then told her husband about this conversation. Although she denied ever calling Dixie Macy a "bitch" to her face, she stated that she had done so when speaking about Macy to her husband, David.

<sup>23</sup> This document, G.C. Exh. 2 in evidence, is dated October 30, 1979, and states:

We the employees of the 7-Eleven Store, #97, Neosho, Missouri, Jack Macy owner, wish to withdraw our petition for representation by the Retail Store Employees Union, Local 322.

The "petition" is signed by David R. Kersey, K. Brent Cotton, Rodney Stark, and Sterling J. Watts. Kersey testified that he signed Foster H. Young's name thereto after Young had given him permission to do so.

tions with Jack Macy about this prior to October 30, 1979, and that, although no specific dollar amounts were mentioned as wages, Macy had referred to the Respondent's profit-and-loss situation at the store and said "he couldn't afford the union." He added that Jack Macy had never threatened to discharge or physically harm him for supporting the Union.<sup>24</sup>

Brent Cotton,<sup>25</sup> employed by the Respondent from February to May 1979 and again from August 1979 until January 1980, testified that Jack Macy never threatened to "blackmail" him if he supported or voted for the Union. Cotton stated that he never discussed the Union with Jack Macy and when Macy received the petition and other enclosed materials from the Board, Macy gave him "the pamphlet and stuff" and told him, "Here. I'm not allowed to say anything to you, but you're supposed to read this." Cotton related that prior to the time of his marriage on October 26, 1979, he had advised Macy that after the marriage he would probably be "leaving the store" because he would be unable to support his wife on the wages he was making with the Respondent.

Rodney Stark,<sup>26</sup> another of the Respondent's employees,<sup>27</sup> testified that he had never spoken to Jack Macy about the Union and that neither Jack nor Dixie Macy had ever threatened to "blackmail" him or threatened him with physical violence if he supported the Union, nor did he ever hear them threaten to close the store if the Union got in. Stark stated that he, Brent Cotton, and David Kersey had discussed withdrawing their support of the Union for the reason that they each had discussed this with their parents who had indicated that "the union wouldn't be any good for us there because we weren't going to be there, if it were going to be a permanent job, it would be a different situation." Stark denied that at the time he signed the "employee petition" to withdraw their support of the Union he was aware or had heard that Dixie Macy had threatened Marcie Kersey, or that the Respondent "was attempting to blackmail Bill Burr with some alleged bad checks because of the union," or that the Macys had threatened to "close down" the store if the Union came in. He did however admit that he was aware, at that time, that Jack or Dixie Macy had informed other employees that the Respondent "couldn't afford the union." Stark additionally testified that, while he was unaware of any threats of violence to any of the Respondent's employees employed during October 1979, he had heard "one of the ex-employees there, I don't even know what had happened, but had said something about being run off the road or something—." He added that the former employee had come into the store and

they were discussing "Dave Kersey and his part in it . . . in the union."<sup>28</sup>

#### *D. Acts of Interference, Restraint, and Coercion*

Section 8(a)(1) of the Act prohibits an employer from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

##### *1. Interrogation of employees concerning their union activity and support*

The complaint herein alleges that the Respondent interrogated its employees regarding their own and other employees' union membership, activities, and sympathies in violation of Section 8(a)(1) of the Act. The Respondent denies this allegation.

#### *Analysis and Conclusions*

According to the testimony of Foster B. Young, on or about October 19, 1979, after he had observed a Board's notice posted at the Respondent's store and had expressed surprise and lack of knowledge concerning it, Jack Macy, the Respondent's owner, responded by asking him whether or not he knew what it was all about and whether this was the first he had heard about it, since the Board had informed Macy that all the Respondent's employees had signed "a petition for the union." Later that evening or early morning of the next day while Young was reading the Board's notice, Macy asked him if he were "finding out something new" at which time Young told Macy that he "did not sign a petition." Either that night or "the next day or two" Macy asked Young if he knew which of the employees had signed "petition cards."<sup>29</sup> Additionally Young testified that Macy, on various occasions, asked him about his feelings toward the Union.

Young also testified that sometime in late October 1979 Dixie Macy spoke to him about the Union and asked him if there were any union meetings scheduled and when Young told her that he had no knowledge of any meetings nor would he go to such meetings if they were held, she requested that he attend the union meetings and report what occurred therein to the Respondent.

Before considering whether the statements made by Jack and Dixie Macy are violative of the Act, it should be noted that the Respondent never called Jack or Dixie Macy to rebut any of the testimony given herein.<sup>30</sup> Fur-

<sup>24</sup> Kersey testified that he left the Respondent's employ because he received a job offer closer to where he would be living after his marriage and with better working conditions.

<sup>25</sup> Cotton testified both as a witness for the General Counsel and for the Respondent.

<sup>26</sup> Stark testified on behalf of both the General Counsel and the Respondent.

<sup>27</sup> Stark testified that the Respondent currently employs five employees including himself and that only he and Foster B. Young remained of the six employees who were employed between October 19 and October 30, 1979.

<sup>28</sup> According to Stark, the "former employee" had worked for the Respondent during 1978.

<sup>29</sup> It would appear from the record that at least Young and possibly Macy, being unfamiliar with the Act, Board procedure, or labor relations law terminology, confused the terms they used in their conversation such as "petition" or "petition cards," actually meaning when applicable respectively, the petition filed by the Union with the Board or the union authorization cards signed by the Respondent's employees.

<sup>30</sup> From the failure of a party to produce material witnesses or relevant evidence obviously within its control without satisfactory explanation, the trier of the facts may draw an inference that such testimony or evidence would be unfavorable to that party. See *Publishers Printing Co., Inc.*, 233 NLRB 1070 (1977); *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15 (1977); *Broadmoor Lumber Company*, 227 NLRB 1123 (1977).

ther, Young, at the time he testified herein was still employed by the Respondent and his testimony, adverse to the Respondent's interests, was given at the risk of economic reprisal, including possible loss of employment, promotion, or denial of wage increase, and not likely therefore to be false.<sup>31</sup> Additionally, significant is the fact that the record clearly shows that Young was not a union adherent, and his testimony in favor of the Union would support the truthful character thereof.<sup>32</sup> In view of the above I fully credit Young's testimony herein.

The General Counsel asserts that by the foregoing conversations the Respondent unlawfully interrogated Young as to his union membership, activities, and sympathies. I agree. The basic premise in situations involving the questioning of employees by their employers about union activities is that such questions are inherently coercive by their very nature and therefore violative of the Act "because of its natural tendency to instill in the minds of employees fear of discrimination on the basis of the information the employer has obtained."<sup>33</sup> However, the Board has held that in certain circumstances employers may have a legitimate purpose for making a particular inquiry of employees which may involve, to some limited extent, union conduct.<sup>34</sup> In this case there were no circumstances present which might have justified some limited inquiry into the union activities of its employees. The Respondent offered no legitimate reason nor can I find any legitimate purpose for such interrogation or questioning of its employee Young other than that it was done, when considered in the light of the Respondent's other actions herein, for the purpose of coercing its employees into refraining from engaging in any union or protected concerted activities.<sup>35</sup> Further, the Respondent, while interrogating its employee, gave him no assurances against reprisals.<sup>36</sup> The accompanying remarks made by Jack Macy to Young during the conversations wherein the interrogation occurred overwhelmingly supports this.<sup>37</sup>

<sup>31</sup> The Board has long held that testimony against the interests of one's employer while still in his employ is entitled to added support. *Shop-Rite Supermarket, Inc.*, 231 NLRB 500 (1977); *St. Anne's Home, Division of the De Paul Community*, 221 NLRB 839 (1975); *Georgia Rug Mill*, 131 NLRB 1304 (1961).

<sup>32</sup> Young testified that he did not care for the Union and that he had told Jack Macy, "if the union came in, I wouldn't probably be working there any longer because I didn't want to go to all the trouble of joining it."

<sup>33</sup> *726 Seventeenth Inc., t/a Sans Souci Restaurant*, 235 NLRB 604 (1978); *N.L.R.B. v. West Coast Casket Co.*, 205 F.2d 904 (9th Cir. 1953).

<sup>34</sup> *P. B. and S. Chemical Company*, 224 NLRB 1 (1976); *Johnnie's Poultry Co., and John Bishop Poultry Co., Successors*, 146 NLRB 770 (1964), enforcement denied 334 F.2d 617 (8th Cir. 1965).

<sup>35</sup> *Jefferson National Bank*, 240 NLRB 1057 (1979); *World Wide Press, Inc.*, 242 NLRB 302 (1979); *Seal Trucking, Ltd.*, 237 NLRB 1090 (1978); *Franklin Property Company, Inc.*, 223 NLRB 873 (1977).

<sup>36</sup> *726 Seventeenth Inc., t/a Sans Souci Restaurant*, supra; *Johnnie's Poultry Co., and John Bishop Poultry Co., Successors*, supra; also see *Chauffeurs, Teamsters and Helpers, Local 633 [Bulk Haulers, Inc.] v. N.L.R.B.*, 509 F.2d 490 (D.C. Cir. 1974).

<sup>37</sup> In his conversations with Young, Jack Macy stated that the Respondent "could not afford the union" and on one occasion added that Mako, Inc., from whom the Respondent secured its franchise to operate the 7-Eleven Store, would not allow the Union to come in but would "close the store" or "burn it down" instead. Macy also during one of these conversations implied that Mako also held some "bad checks" of employee Bill Burr and would use this against him because of his support of the Union. Kersey's testimony concerning what Macy told him con-

The test applied in determining whether a violation of Section 8(a)(1) of the Act occurred is "whether the employer engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act."<sup>38</sup> Applying that test, I find that the Respondent by interrogating its employees, as set forth above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act and has thereby violated Section 8(a)(1) thereof.<sup>39</sup>

I also find that Dixie Macy's statement to Young constituted an unlawful soliciting of an employee to ascertain and divulge the union activities of other employees. Such statements also interfere with, restrain, and coerce employees in the free exercise of the rights guaranteed them in Section 7 of the Act and are violative of Section 8(a)(1) thereof.<sup>40</sup>

## 2. Threats

The complaint herein alleges that the Respondent threatened its employees with closure of its store if they selected the Union as their collective-bargaining representative, with blackmail and/or violence because of their membership in, support for, and activities on behalf of, the Union, and one employee with a reduction in working hours and adding those hours to the working hours of another employee to persuade the employee to withdraw his support for the Union, all in violation of Section 8(a)(1) of the Act. The Respondent denies these allegations.

cerning Burr's checks supports both Young's testimony and my conclusion herein.

<sup>38</sup> *Electrical Fittings Corporation, a Subsidiary of I-T-E Imperial Corporation*, 216 NLRB 1076 (1975).

<sup>39</sup> *Jefferson National Bank*, supra; *World Wide Press, Inc.*, supra; *Colonial Haven Nursing Home, Inc.*, 218 NLRB 1007 (1975).

<sup>40</sup> *Fayetteville Industrial Maintenance, Inc.*, 218 NLRB 889 (1975); *Midwest Steel Corporation*, 217 NLRB 837 (1975).

The Respondent in its brief points to the fact that the Respondent did not interrogate any of its other employees or solicit these other employees to divulge the union activities and sympathies of their fellows in support of its contention that the Respondent did not violate the Act and to bolster its assertion that Young's testimony should not be credited. I do not concur in this. The Respondent knew on or about October 19, 1979, that its employees were involved with the Union. Jack Macy learned that evening that Young had not signed a union authorization card and did not support the Union. That Dixie Macy learned this from her husband is highly inferable from the circumstances present herein. Macy was also aware that "he wasn't to talk about the Union." It is not unreasonable to assume that with the Board's admonition to the Respondent as construed by a "layman" employer, the Macys would interrogate Young, once having discovered his antiunion attitude, rather than any of the other employees, about his union activities and sympathies and as to that of the other employees, all of whom they suspected of supporting the Union, i.e., Jack Macy's statement to Young that the Board had indicated that all the Respondent's employees had "signed a petition for the union." Even if this were not true, the Respondent's violative conduct as found above would not become lawful because such conduct was not also directed to other employees. Additionally and for much the same reason, I also discount the Respondent's contentions in its brief to support its position that Young had not "talked to the other employees about this." Further, the fact that the Respondent may have complied with the Board's direction to post the Board's notice in its store and to distribute the Board's pamphlets explaining employee rights is not persuasive in negating the above finding that the Respondent violated Sec. 8(a)(1) of the Act.

### Analysis and Conclusions

The credited testimony of Young shows that on October 19, 1979, after interrogating Young concerning his knowledge of the petition filed by the Union with the Board, Jack Macy told him that the Respondent's franchisor, Mako, Inc., had advised Macy that employee Bill Burr, probably the instigator of the Union's representation petition would be "taken care off," by means of some bad checks issued by Burr and in Mako, Inc.'s possession. David Kersey also testified creditably<sup>41</sup> that Macy had told him that the Respondent had some "bad checks written to the store" by Bill Burr and that Burr was "on probation for writing bad checks and that if those checks were turned over to the prosecuting attorney, Mr. Bill Burr couldn't vote in jail." According to Kersey, Macy stated that he knew Burr was for the Union. The intent of Macy's statement is clear from the above that these statements amounted to a threat of blackmail and reprisal in retaliation against employees because of their support of the Union.<sup>42</sup>

The credited testimony of Young shows that in the latter part of October 1979, Jack Macy told him that Mako, Inc., would not allow the Union in and would "close the store up and burn it down before they would allow the union to get a foothold in." Macy also stated on various occasions that the Respondent "could not afford the Union." Although Kersey testified that he had various conversations with Macy concerning the better benefits and higher wages (\$7 or \$8 an hour) being paid to employees of other retail grocery stores in the area, the above statement concerning closing the store supported by the Respondent's assertion that it "could not afford" the Union made in the context of the existing circumstances herein was clearly an unlawful threat of plant closure and I so find.

The Respondent asserts that "[e]ven if it is assumed that the statements were made by the employer, the statements would be protected by the provisions of Section 8(c) of the [Act]." I do not credit this assertion. During the conversation concerning the threat to Burr, Macy indicated that the Respondent could not afford the Union. Again when Macy told Young that Mako, Inc., would never allow the Union in but instead would close down the store and/or burn it down to avoid union representation of the Respondent's employees, Macy again reiterated that the Respondent could not afford the Union. Macy's expression that the Respondent could not

afford the Union when considered along with his other statements accompanying this, can in *no way* be construed as permissible predictions of possible adverse consequences of unionization which are specifically protected by Section 8(c) of the Act as lawful prediction of events beyond the Respondent's control.<sup>43</sup>

In *N.L.R.B. v. Gissel Packing Co., Inc.*, et al., 395 U.S. 575, 618-619 (1969), the Supreme Court held that an employer may make a prediction as to the precise effect he believes unionization will have on his company, "... so long as the communications do not contain a threat of reprisal or force or promise of benefit." The Court continued:

In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization . . . "Conveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is improbable, the eventuality of closing is capable of proof."

The Court further stated (at 617):

Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the em-

<sup>41</sup> I credit Kersey's testimony for the following reasons: that at the time he testified herein he was no longer employed by the Respondent, having voluntarily quit his employment, and had no apparent reason to testify other than as to his own recollection. See *Tri-County Tube, Inc.*, 194 NLRB 103 (1971); that Jack Macy was not called as a witness herein and his failure to testify leads me to draw the inference that his testimony would have been unfavorable to the Respondent. See *Publishing Printing Co., Inc.*, *supra*; *Broadmoor Lumber Company, supra*; and that Kersey's testimony was given in a generally clear, unequivocal and forthright manner and consistent with the other evidence present in the record. I am not unaware that Dixie Macy threatened Kersey's wife, Marcie. However, I do not feel in view of the above that Kersey's testimony, adverse in some respects to the Respondent's positions herein, was influenced by this. The Respondent failed to show any bias on Kersey's part and the tenor of his testimony was not vindictive or vengeful.

<sup>42</sup> *Jorgensen's Inn*, 227 NLRB 1500 (1977); *Florida Medical Center, Inc.*, 227 NLRB 1412 (1977).

<sup>43</sup> Even assuming that the Respondent actually believed that should the Union become the collective-bargaining representative of the Respondent's employees, a \$7 or \$8-an-hour wage rate would follow, this did not justify the threats of blackmail and retaliation made against employees or those indicating that the store would be closed and/or burned down if the Union got in. The record is devoid of any objective fact upon which the Respondent relied in making its statement about Mako, Inc., closing the store if the Union came in. And the fact that Macy attributed these threats to Mako, Inc., does not change the coercive nature of the threats. Just Macy's reiteration thereof without a denial of similar intent or resistance to such action by the Respondent gives rise to a strong inference of the Respondent's endorsement of and acquiescence in these threatened actions. These were threats pure and simple. That Macy did not tell Kersey or any of the other employees, besides Young, that the Respondent would close its operations if the Union got in also does not change the unlawful nature of the Respondent's conduct. I also do not credit the Respondent's assertions in its brief that the circumstances herein are similar to what occurred in *Arthur Winer, Inc.*, 94 NLRB 651 (1951), where "on one occasion a vague remark is made about the possibility of plant closure." The Respondent's statement was no vague remark or an isolated instance when coupled with the Respondent's other actions herein and formed part and parcel of a plot and scheme to undermine the Union's strength among its employees and discourage union support. Furthermore, the Respondent's contention that the statements made to Young could not be held illegal as violative of Sec. 8(a)(1) of the Act because "not made in a threatening manner" and "to one not affected by purported plant closing statements" is also not supported by the evidence in the record. Young certainly was not a transient employee, and even if he intended to work only part time continuously throughout his employment with the Respondent, part-time employees are entitled to the protection of Sec. 7 of the Act. Additionally, Macy's discussion of the possibility of serious and severe retaliation against Burr because of his union activities, in addition to threats regarding the closing or burning of the store because of employee union activities or the Union's success in organizing the employees, does not require a threatening manner for belief; these remarks constitute frightening statements in the recitation alone.

employees to associate freely, as those rights are embodied in [Section] 7 and protected by [Section] 8(a)(1) and the proviso to [Section] 8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear. . . .

Continuing, the Court stated (at 618):

If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts, but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment.

Concerning the statements made as a whole, and in view of the above, it is inescapable that these were not communications of general opinion about union representation, but threats of reprisals or force ". . . threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment."<sup>44</sup>

Therefore, I find that the Respondent, when it threatened its employees as set forth above, because of their membership in, support for, and activities on behalf of the Union, violated Section 8(a)(1) of the Act.<sup>45</sup>

Further, the Board has long held that threats by an employer to close a business because of union activity is one of the most egregious of the forms of interference with the free exercise of employee rights.<sup>46</sup>

Additionally, Young testified that he overheard Dixie Macy tell Jim Trainer, a customer, that Mako, Inc., had informed Jack Macy that if Macy could find out among the Respondent's employees "who the instigator of the union was . . . they would come down and take care of him, because they had difficulty in another place and they had done what was necessary to stop it." Dixie Macy also said therein that Jack Macy advised Mako that he did not "want anybody to get hurt." While the Respondent denied that this conversation took place, I credit Young's testimony thereon for the reasons hereinbefore discussed.<sup>47</sup> Furthermore, although Jim Trainer testified that Dixie Macy never made such a statement, he admitted that sometime in October 1979 he had discussed the Union with her and that all she said was "that they were trying to get a union in." From the record it appears that Trainer is more than a mere customer. He is

also friendly with the Macys. He is consistently allowed in the backroom of the store where generally no customers are tolerated, stops at the Respondent's store regularly to converse with the Macys, and in view of this it borders on the incredible that Trainer's conversation with Dixie Macy consisted only of the statement "they were trying to get a union in." The fact that Dixie Macy believed that she could talk about the Union with Trainer but "we just can't fire anyone," highlights my doubts concerning Trainer's version of this conversation. Again and most significantly Dixie Macy was never called as a witness herself to testify about this conversation and to corroborate Trainer's account thereof.

Dixie Macy's statements, made in the obvious presence of an employee, when considered in the light of the Respondent's other conduct herein, constituted an unlawful threat of reprisal through violence. The clear implication of these statements is that the Respondent would resort to reprisals to persuade its employees to withdraw their support from the Union and, therefore, is violative of Section 8(a)(1) of the Act.<sup>48</sup>

Moreover, the uncontradicted testimony of David Kersey, Debbie Cotton, and Marcie Kersey shows that Dixie Macy threatened to "kick Marcie's ass" because the Respondent believed that Marcie Kersey and her father had conspired to bring the Union in. The General Counsel contends that Dixie Macy's statements to Marcie Kersey and others constituted a violation of Section 8(a)(1) of the Act. I agree. The Board has held that statements made to relatives of employees are nonetheless violative of Section 8(a)(1) of the Act if the statements tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. The evidence shows that Dixie Macy's threat to Marcie Kersey was brought to David Kersey's attention by his wife, Marcie. Significantly David Kersey testified that one of the reasons he decided to withdraw his support of the Union, thereafter preparing a petition to this effect, was because of the threats to his wife.

In view of the above, I find and conclude that when Dixie Macy threatened Marcie Kersey, she violated Section 8(a)(1) of the Act.<sup>49</sup>

Lastly, on or about October 29 or 30, 1977, Young had a conversation with Jack Macy regarding a scheduled reduction in Young's work hours. After Young protested the cut, asserting that he had nothing to do with the Union, Macy replied that he had reduced Young's hours because he knew Young "was against the union or wasn't for it and that Bill Burr, he gave the hours to him to win his votes." In considering the record as a whole Macy's statements amount to an unlawful threat to reduce the working hours of an employee and to add these hours to another employee to persuade the latter

<sup>44</sup> *N.L.R.B. v. Gissel Packing Co.*, *supra* at 618.

<sup>45</sup> *Hanover House Industries, Inc.*, 233 NLRB 164 (1977); *Joseph Macaluso, Inc. d/b/a Lemon Tree*, 231 NLRB 1168 (1977), *enfd.* 618 F.2d 51 (9th Cir. 1980); *Ann Lee Sportswear, Inc.*, 220 NLRB 982, 983 (1975); *Oahu Refuse Collection Co., Inc.*, 212 NLRB 224, 226-227 (1974); *Jimmy Richard Co., Inc.*, 210 NLRB 802, 805 (1974).

<sup>46</sup> *General Stencils, Inc.*, 195 NLRB 1109, 1110 (1972), *enforcement denied* 472 F.2d 170 (2d Cir. 1972).

<sup>47</sup> For example, Dixie Macy did not testify at the hearing. Young was still employed by the Respondent at the time he testified herein, and the evidence shows that Young never supported the Union in its organizational campaign.

<sup>48</sup> See *Jamaica Towing, Inc.*, 236 NLRB 1700, 1705 (1978). The fact that Jack Macy told Mako, Inc., that he wanted nobody injured does not negate the violation of the Act. The Respondent's seeming acceptance of the threatened action by Mako, Inc., against Bill Burr and the Respondent's own store implies acceptance of any other threats made by Mako of similar nature. Significantly Macy used the pronoun "we" when he discussed these actions implying agreement with, and possible cooperation and participation with, Mako, Inc., in these threats.

<sup>49</sup> *Albertson Manufacturing Company*, 236 NLRB 663, 668 (1978).

employee to withdraw his support of the Union and I so find. Clearly these statements were made to influence the outcome of the election and, necessarily, interfered with, restrained, and coerced employees in the free exercise of the rights guaranteed them in Section 7 and thereby was in violation of Section 8(a)(1) of the Act.<sup>50</sup>

### 3. Impressions of surveillance

The complaint alleges that the Respondent created the impression among its employees that their union activities were under surveillance by the Respondent and thereby violated Section 8(a)(1) of the Act. The Respondent denies this allegation.

### Analysis and Conclusions

According to the credited testimony of Foster B. Young, Jack Macy told him on or about October 19 or 20, 1979, that employee Bill Burr was probably the "instigator of the petition for the union" and that Macy had learned this from Mako, Inc. Young also testified that he overheard Dixie Macy tell Jim Trainer that Mako, Inc., had asked Jack Macy to find out who the "instigator of the union" was and they would "take care of him." Further, David Kersey testified that Jack Macy had told him that he knew Bill Burr "was for the union."

The Respondent asserts, "The mere fact that Macy generalized that an employee with history of financial problems started a union is not an indication of surveilling union activities." The Respondent cites *Perko's, Inc.*, 236 NLRB 884 (1978), in support of its assertion. In the *Perko's* case a supervisor had commented "that the older waitresses were probably responsible for the union activity." The Board held therein (at fn. 3):

However, there is no evidence that this remark was based on actual surveillance or, indeed, on anything other than mere speculation and we find that employees would not reasonably assume from this comment that their union activity was under surveillance.

The General Counsel on the other hand contends:

Macy's statement that Bill Burr was probably the "instigator" of the petition for the Union is also violative of Section 8(a)(1) of the Act. A similar statement by a supervisor was found violative of Section 8(a)(1) of the Act in *Publisher's Offset, Inc.*, 225 NLRB 1045 (1976). There the Board found that such statement created the impression of surveillance. . . .

<sup>50</sup> It should be noted that Jack Macy did not testify to rebut this and although Young's testimony regarding the reduction in hours was not that clear and the evidence herein indicates that the proposed reduction from 40 to 18 hours per week never was implemented against Young, still David Kersey's testimony tended to corroborate that given by Young, i.e., that Young complained to Kersey about the reduction in hours, and the schedules of employee hours of work during this period, in evidence, does show some reduction of worktime, and why this occurred was never clearly explained by the Respondent. Be that as it may, the fact that Young's hours were not actually reduced as threatened does not dispel the impact of the threat itself on the employee and, moreover, the record indicates that, when Young complained to the Respondent about this, Macy agreed to add hours back on the work schedule for him.

In *Publisher's Offset, Inc.*, the employer's general manager had stated "that he suspected employee Jeanette Cochran of circulating union authorization cards."

I note that in the *Publisher's Offset, Inc.*, case a specific employee was named as the suspected union activist while in *Perko's, Inc.*, the employer suspected a generalized group, "the older waitresses." Be that as it may, in the instant case Macy's statements to both Young and Kersey not only identified Bill Burr as the union activist and union sympathizer, respectively, but carried with it the threat of possible reprisal therefore which makes these statements more than mere generalization or speculation.

In determining whether an employer created an impression of surveillance, the test applied by the Board is whether employees would reasonably assume from the statements or actions in question that their union activities had been placed under surveillance.<sup>51</sup> In considering the above statements I find that such an assumption is reasonable. The statements in these instances were not in the nature of rumor but of positive fact and well could give the employees involved the impression that their activities were under surveillance.

In view of the above, I find and conclude that the Respondent, by the above statements of its representatives, created the impression among its employees that their activities on behalf of the Union or otherwise were under surveillance and thereby violated Section 8(a)(1) of the Act.<sup>52</sup>

### 4. Additional violations

The complaint alleges that the Respondent circulated among its employees a petition requesting the Union to withdraw the representation petition it filed with the Board in Case 17-RC-8916, its action being violative of Section 8(a)(1) of the Act. The Respondent denies the allegation.

### Analysis and Conclusions

The parties herein stipulated that "a petition to withdraw support of the union along the lines described by the witness was prepared by Dixie Macy and left on the counter at the store for the employees to sign." Young testified that sometime in late October 1979 Dixie Macy had placed a clipboard on the store counter and told him, "Here is a petition to stop the union from coming in and all the other employees are going to sign it, and you can sign it if you want to."<sup>53</sup>

The Respondent alleges that the petition "is of no significance." I do not agree. The evidence herein clearly establishes that Dixie Macy prepared the petition to withdraw employee support from the Union, requested at least one employee to sign it, and made it available in a conspicuous place at the Respondent's place of business for their employees to sign. The Respondent asserts that

<sup>51</sup> *Publisher's Offset Inc.*, *supra*; *Schrementi Bros., Inc.*, 179 NLRB 853 (1969).

<sup>52</sup> *South Shore Hospital*, 299 NLRB 363 (1977); *Publisher's Offset, Inc.*, *supra*; *Richlands Textile, Inc.*, 220 NLRB 615 (1975).

<sup>53</sup> Young related that when he signed the petition there were no other signatures on it and he left it on the counter.

the "evidence does not demonstrate in any way that the petition was coercive." However, the petition coupled with the Respondent's heretofore found unlawful interrogation of its employees, threats, and warnings of closure of the business, threats of potential violence against employees and their families, and its other actions herein gives rise to the strong inference that coercion is present.<sup>54</sup> Further it is significant as to timing that the Respondent's employees prepared their own petition to "withdraw from the union" in or about this time and after David Kersey had spoken to either Jack or Dixie Macy about such a withdrawal, after which the Respondent's petition disappeared. This coincidence is striking, relevant, and revealing.

In view of all of the above I find and conclude that the Respondent violated Section 8(a)(1) of the Act when it prepared and circulated among its employees a petition to withdraw support from the Union.<sup>55</sup>

#### E. The Applicability of a Bargaining Order

The complaint alleges that the unfair labor practices committed by the Respondent are "so serious and substantial in character and effect" as to preclude the holding of a fair election and warrant the entry of a remedial order requiring the Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees in the appropriate bargaining unit. The Respondent denies this and contends, in substance, that even if the Respondent did engage in unfair labor practices, these were not extensive and do not warrant the imposition of a bargaining order.

#### Analysis and Conclusions

As previously found herein, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act consists of:

All full-time and regular part-time employees at its store in Neosho, Missouri, excluding office clerical employees, guards, and supervisors as defined in the Act.

The parties stipulated that as of October 19, 1979, the Respondent employed six employees properly includable in the above unit: David Kersey, Brent Cotton, Rodney Stark, Bill Burr, Sterling J. Watts, and Foster B. Young. The uncontroverted evidence herein shows that of these six employees four signed authorization cards—Kersey, Cotton, and Stark on October 18, 1979, and Burr on October 9, 1979. The authorization cards are single-purpose

cards valid on their face and no evidence was deduced herein which would impair their validity.<sup>56</sup> Accordingly, I find that on October 19, 1979, the Union represented a majority of the Respondent's employees in the appropriate unit.

In *N.L.R.B. v. Gissel Packing Co., Inc.*, *supra*, the Supreme Court approved the Board's use of bargaining orders to remedy an employer's unfair labor practices which undermined a union's majority status and fatally impeded the holding of a fair election. In doing so, the Court held that bargaining orders would be appropriate in two situations. The first involves unfair labor practices which are so "outrageous and pervasive" traditional remedies cannot eliminate their coercive effect, with the result that a fair election is rendered impossible. The second as described by the Court at 614-615 occurs:

... in less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes. The Board's authority to issue such an order on a lesser showing of employer misconduct is appropriate, we should reemphasize, where there is also a showing that at one point the Union had a majority; in such a case, of course, effectuating ascertainable employee free choice becomes as important a goal as determining employer misbehavior. In fashioning a remedy in the exercise of its discretion, then, the Board can properly take into consideration the extensiveness of an employer's unfair practices in terms of their past effect on election conditions and the likelihood of their recurrence in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair . . . election by the use of traditional remedies, though present, is slight, and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue.

The Court also emphasized in *Gissel* that:

It is for the Board and not the courts . . . to make that determination [as to whether a bargaining order is necessary], based on its expert estimate as to the effects on the election process of unfair labor practices of varying intensity.<sup>57</sup>

The Board itself stated in *Ship Shape Maintenance Co., Inc.*, 189 NLRB 395, 396 (1971):

It is now settled that serious illegal activity accompanying an employer's refusal to grant recognition and to bargain with the majority representative of its employees destroys the necessary conditions for the holding of a free and fair election.

<sup>54</sup> The Respondent particularly cites the case of *Jimmy-Richard Co., Inc.*, 210 NLRB 802 (1974), in support of its contentions. However, in that case the Board held that an employer acted lawfully where it prepared a letter in which its employees requested withdrawal of their authorization cards from the union and solicited employee signatures thereon where the request to withdraw was initiated by the employees. (Emphasis supplied.) In the instant case there is no evidence in the record to show that the Respondent's employees initiated the petition prepared by Dixie Macy. While Kersey testified that he had spoken to Jack or Dixie Macy about "withdrawing from the Union," it would appear that no petition was mentioned, although it is unclear as to actually what was said, and neither Jack nor Dixie Macy testified herein.

<sup>55</sup> *Missouri Pressed Metals, Inc.*, 237 NLRB 1398 (1978); *Kenworth Trucks of Philadelphia*, 229 NLRB 815 (1977).

<sup>56</sup> *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. at 612, fn. 32; *Cumberland Shoe Corporation*, 144 NLRB 1263 (1963), *enfd.* 351 F.2d 917 (6th Cir. 1963).

<sup>57</sup> 395 U.S. at 612.

The foregoing unlawful conduct not only precluded the holding of a fair election in the representation proceeding the Union had instituted, but, in our judgment, was of a sufficiently pervasive and extensive character . . . to have likely served its intended purpose of undermining the Union's preexisting majority. In these circumstances we believe that restoration of the *status quo ante* is required in order to vindicate employee rights and prevent the Respondent from profiting from its own unfair labor practices. We are further of the opinion that the lingering effects of Respondent's past coercive conduct render uncertain the possibility that traditional remedies can ensure a fair election. We therefore conclude, on balance, that the Union's majority card designations obtained before the unfair labor practices occurred provide a more reliable test of employee representation desires, and better protect employee rights, than would a rerun election.<sup>58</sup>

The Board's decision to issue a bargaining order is based upon all the circumstances of the case including the nature of the violations and the context in which they occurred. It is pursuant to such an overall evaluation that the Board makes its finding.<sup>59</sup> Normally the Board bases its *Gissel* bargaining orders upon all unfair labor practices committed by a particular respondent which interfered with, restrained, and coerced employees in the exercise of their Section 7 rights.<sup>60</sup> Applying the principles set forth in *Gissel*, the Board has held that a bargaining order remedy is warranted where the employer has engaged in pervasive violations of Section 8(a)(1) of the Act.<sup>61</sup>

<sup>58</sup> See also *Jefferson National Bank*, *supra*; *Petrolane Alaska Gas Service, Inc.*, 205 NLRB 68 (1973); *Joseph J. Lachniet, d/b/a Honda of Haslett*, 201 NLRB 855 (1973), *enfd.* 490 F.2d 1382 (6th Cir. 1977). As to the absence of a demand for recognition by the Union herein, it is well settled that a *Gissel* bargaining order is not conditioned upon such a request. See *Steven Davis and Michael Provenzano d/b/a Carlton's Market*, 243 NLRB 837 (1979); *Beasley Energy, Inc., d/b/a Peaker Run Coal Company, Ohio Division #1*, 228 NLRB 93 (1977); *Trading Port, Inc.*, 219 NLRB 298 (1975).

<sup>59</sup> *Rennselaer Polytechnic Institute*, 219 NLRB 712 (1975).

<sup>60</sup> *Rapid Manufacturing Company*, 233 NLRB 465 (1979); *Baker Machine & Gear, Inc.*, 220 NLRB 194, 195 (1975); *Idaho Candy Corporation*, 218 NLRB 352, 358-359 (1975).

<sup>61</sup> In *Chatfield-Anderson Co., Inc., d/b/a Truss-Span Company*, 236 NLRB 50, 61 (1978), the Board stated:

Respondent committed no unlawful discharges or other acts of virulent discrimination to discourage employee support of the Union, instances of which exist in most cases where so-called *Gissel* bargaining orders have issued. Respondent's violations of Section (a)(1), however, not only were pervasive, but sometimes flagrant, involving threats of economic retaliation in sundry forms—closure, withheld raises, the cessation of pension and profit-sharing coverage; intimations of deliberately extended negotiations and more stringent work rules; and the promise of retroactive benefits once the Union was out of the picture. It is concluded in these circumstances, even without unlawful discrimination, that a fair second election is a forlorn possibility, and that a bargaining order therefore is necessary to protect the employees' representational rights. *Donn Products, Inc. & American Metals Corporation*, 228 NLRB 116 (1977); *Four Winds Industries, Inc.*, 228 NLRB 1124 (1977).

In the *Donn Products, Inc.*, case, the employers violated Sec. 8(a)(1) by interrogating employees, threatening to discharge and prosecute employees for union activities, granting benefits to employees, instituting a new arbitration procedure, by threatening employees with harsher discipline, by threatening to engage in sham bargaining should the Union be select-

The General Counsel contends that

. . . by the violations of Section 8(a)(1) recited herein above, the Respondent created an atmosphere which precludes the holding of a fair election and, therefore, a bargaining order remedy is warranted, especially in light of the small complement of unit employees involved.

I do not agree.

While it is true that the Respondent commenced its unfair labor practices immediately upon learning of the Union's organizational campaign, giving rise to a strong inference that the design thereof was to undermine the Union's majority status, and that the Respondent's unlawful actions in violation of Section 8(a)(1) of the Act were in some instances of a serious nature, yet there are other factors present which mitigate against the issuance of a bargaining order herein in lieu of the holding of a fair election.

In separately considering the violations of Section 8(a)(1) committed by the Respondent beginning with the threat of plant closure, as noted before the Board has generally held:

A direct threat of loss of employment, whether through plant closure, discharge or layoff, is one of the most flagrant means by which an employer can hope to dissuade employees from selecting a bargaining representative.<sup>62</sup>

As the Board emphasized in *Continental Kitchen Corporation*, 246 NLRB 611, 616 (1980):

Threats of plant closure strike at the very heart of employee concerns, job tenure, and by their very nature, tend to coerce employees from exercising their Section 7 rights.<sup>63</sup>

Significantly in all the cases cited by the General Counsel in support of its contention and those additionally cited by me wherein threats of plant closure occurred, the evidence clearly showed that these threats were

ed, and by threatening plant closure if the Union won the election. In *Four Winds Industries*, *supra*, the unlawful conduct violative of Sec. 8(a)(1) consisted of threats of job loss, threats not to bargain with the union in good faith if it won the election, and expressing to employees the futility of their union support. See also *Willow Mfg., Corp.; Oak Apparel, Inc.*, 229 NLRB 323 (1977) (unlawful interrogation of employees, threats of plant closure, promises and granting of benefits and soliciting an employee to withdraw his authorization card); *Eagle Material Handling of New Jersey*, 224 NLRB 1529 (1976) (solicitation of employee grievances and complaints, discharge of an unpopular supervisor in response to employee complaints, threats to move unit equipment and work, promises of additional benefits and a written guarantee of continued employment, and implementation of changes in employee benefits and working conditions after the election in fulfillment of the unlawful preelection promises). It would appear that in the above cases substantial turnover of unit employees was not present nor considered a factor therein.

<sup>62</sup> *General Stencils, Inc.*, *supra*.

<sup>63</sup> In the *Continental Kitchen Corporation* case, the employer had unlawfully promulgated a rule prohibiting employees from distributing and posting union literature, solicited employee grievances and promised to remedy them, promised and did actually institute a job classification program, and threatened to close the plant if the union came in, all in violation of Sec. 8(a)(1) of the Act.

either made to a few employees who then directly, or as could be reasonably inferred from the circumstances herein to have, conveyed this to the other employees, or were made directly to the employees at a conference or meeting, and therefore became common knowledge among the employees. In the instant matter the statements by the Respondent constituting its threat to close the business if the Union came in were directly made to only one employee who admittedly was nonsupportive of the Union and who did not discuss the threat with any of the other employees.<sup>64</sup>

Concerning the other threats made by Jack and Dixie Macy, Kersey testified that after speaking to Cotton and Stark, who indicated to him that they had changed their minds and no longer wanted the Union, "combined with various comments and conversations concerning threats to my future bride at the time, items about bad checks just ran together and it seemed to me at the time that the Union was not a good idea for all concerned." A petition was then prepared by Kersey and Brent and Debbie Cotton withdrawing employee support of the Union and circulated among the employees.<sup>65</sup> While such action by employees, withdrawal of their support for the Union constituting the dissipation of the Union's majority status, would usually be strong evidence of the coercive nature and effectiveness of the Respondent's unlawful conduct warranting the imposition of a bargaining order, it is less so in this case.

Again only Young and Kersey were aware of the threat made by Jack Macy regarding Bill Burr to the effect that unless Burr withdrew his support of the Union, some "bad checks" issued by him would be used against him either in civil or criminal litigation. In weighing the coercive nature of this threat, consideration must be given to the fact that Young was not a union adherent, Kersey voluntarily left the Respondent's employ approximately 4 months after these events happened, and Cotton and Stark, the other employees who supported the Union, were unaware of the threats. Further, with regard to the two other employees who signed cards and testified herein, Brent Cotton voluntarily quit the Respondent's employ after his marriage solely because of the financial need to earn higher wages, and Rodney Stark remained as an employee while specifically testifying that he withdrew his support of the Union only because his parents recommended it.<sup>66</sup>

<sup>64</sup> Those employees who signed authorization cards and who testified herein, Kersey, Cotton, and Stark, either failed to acknowledge or actually denied knowing about the Respondent's threat of plant closure. It should be particularly noted that David Kersey, the Union's strongest supporter, testified as to knowledge of other threats made by the Respondent, i.e., by Jack Macy against employee Bill Burr, by Dixie Macy against Kersey's wife, Marcie, by Jack Macy against Foster Young concerning Young's hours of work, but Kersey did not mention any knowledge of a specific threat of plant closure should the Union be successful in its organizing of the Respondent's employees. Furthermore, from the tenor of Brent Cotton's testimony it is reasonable to infer that Cotton also had no knowledge of Macy's threat to Young that the Respondent's store and operations would close down if the Union came in, and Stark actually denied any knowledge thereof.

<sup>65</sup> The petition was signed by Kersey, Cotton, Stark, Young, and Watts.

<sup>66</sup> I am not unaware that Stark was still employed by the Respondent at the time he testified or that he related being told by an "ex-employee," during a discussion about David Kersey and his union activity, that pre-

As concerns the threat by Dixie Macy to "kick Marcie's ass," although I found this to be violative of the Act in view of the Respondent's other actions herein, I cannot believe that this was a threat taken too seriously by Kersey as to be a significant factor in the withdrawal of his support of the Union.<sup>67</sup>

Moreover, all the Respondent's other unlawful conduct was confined to statements made to Foster B. Young except for Macy's statement to Kersey about Burr being in favor of the Union which I found had created the impression of surveillance of employees' union activities. Young was not a union adherent. In fact the evidence tends to show that he opposed it. There is also a lack of any history in the record herein of prior union animus on the part of the Respondent and it should be noted that the Respondent posted the Board's notice upon the receipt thereof, indicated to some employees that its representatives could not discuss the Union with them, and made the Board's election procedure material available to the employees. Another factor to be considered, although of minor importance, is the status of the Respondent, it being a family business, with its owners being "unsophisticated in the legal niceties of labor relations law."

As the courts have consistently required and as the Board has duly considered in cases of this nature, the so-called second category under *Gissel*, an assessment of the possibility of holding a fair election or in the alternative, and in lieu thereof, the applicability of a bargaining order as a remedy must be made in terms of any continuing effect of the unlawful conduct, the likelihood of any recurring misconduct, and the potential effectiveness of the Board's ordinary remedies.

After considering all the above and noting that of the four employees who supported the Union, only Rodney Stark remains currently employed and he had withdrawn his support of the Union for reasons other than the Respondent's unfair labor practices; that of the original total of six employees in the unit only Stark and Foster B. Young remain; that the desires concerning union representation of a majority of the Respondent's employees currently employed must be considered under the circumstances; that the record herein does not reflect a work force suffering from the residual impact of coercive conduct; and that there is no evidence herein that the employer's misconduct is likely to recur, I am of the opinion that the extraordinary remedy of a bargaining order is unnecessary, and that an election herein will more effectively promote the policy of employee free choice.<sup>68</sup>

viously this "ex-employee" was "something about being run off the road." But there was no evidence deduced to discredit Stark's testimony as to the reason he withdrew his support of the Union as stated herein.

<sup>67</sup> Marcie Kersey's own testimony in which she admittedly felt no fear of Dixie Macy because of Macy's threat, supports this.

<sup>68</sup> *American Sunroof Corporation*, 248 NLRB 798 (1980); *Chef's Pantry, Inc.*, 247 NLRB 77 (1980); *Sturges-Newport Business Forms*, 227 NLRB 1426 (1977); *First Lakewood Associates v. N.L.R.B.*, 582 F.2d 416 (7th Cir. 1978); *N.L.R.B. v. Armcor Industries*, 535 F.2d 239 (3d Cir. 1976); *N.L.R.B. v. Gruber's Super Market, Inc.*, 501 F.2d 697 (7th Cir. 1974); *Peerless of America, Inc. v. N.L.R.B.*, 484 F.2d 1108 (7th Cir. 1973).

#### IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.<sup>69</sup>

#### CONCLUSIONS OF LAW

1. The Respondent, Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Retail Store Employees Union Local 322, affiliated with United Food and Commercial Workers International Union, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by:

(a) Coercively interrogating an employee concerning his union activities and sympathies.

(b) Soliciting an employee to ascertain and divulge the union activities of other employees.

(c) Threatening an employee with plant closure, threatening to take criminal or civil legal action against an employee because of his issuance of "bad checks" if he, and impliedly other employees, did not abandon their support of the Union, threatening bodily harm and violence to an employee's family, and threatening an employee with a reduction in working hours and adding those working hours to another employee in order to persuade the other employee to withdraw his support of the Union, all to discourage employee designation of a collective-bargaining representative.

(d) Creating the impression that the employees' activities on behalf of the Union were under surveillance.

(e) Preparing and circulating a petition among some of its employees which sought to withdraw the employees' support of the Union.

4. All full-time and regular part-time employees at the Respondent's store in Neosho, Missouri, excluding office clerical employees, guards and supervisors as defined in

<sup>69</sup> In the light of the standards set forth in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), I conclude that a broad remedial order is inappropriate since it has not been shown that the Respondent has a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental rights. Accordingly, I recommend the use of the narrow injunctive language "in any like or related manner" in the recommended Order.

Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. The Union represented a majority of the employees in the above appropriate unit on October 19, 1979.

6. The unfair labor practices found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>70</sup>

The Respondent, Walter Jack and Dixie A. Macy d/b/a 7-Eleven Food Store, Neosho, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees concerning their union activities and sympathies.

(b) Soliciting employees to ascertain and divulge the union activities of other employees.

(c) Threatening its employees with plant closure, criminal or civil legal action, bodily harm or violence either to employees or their families, reduction of work hours and adding those hours to other employees, if the employees engage in union activities or support or become members of the Union and to discourage their designation of the Union as their collective-bargaining representative.

(d) Creating the impression that the employees' activities on behalf of the Union are under surveillance.

(e) Preparing and circulating any petitions among its employees which seek employee withdrawal of their support of the Union.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Post at its Neosho, Missouri, store or facility copies of the attached notice marked "Appendix."<sup>71</sup> Copies of the notice, on forms provided by the Regional Director for Region 17, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices

<sup>70</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>71</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

are not altered, defaced, or covered by any other material.

(b) Mail a copy of the attached notice marked "Appendix" to each and every employee at his or her home address who is working at its store on the date on which such notice is mailed and every employee who worked in its store during the period of the Respondent's unfair labor practices.<sup>72</sup>

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order what steps have been taken to comply herewith.

<sup>72</sup> I have recommended this additional affirmative action to insure that each and every employee is made explicitly aware of his or her rights under the Act and reassured that the Respondent will not interfere with, restrain, or coerce them with respect to these rights. The Board is charged with the responsibility of fashioning proper remedies to effectuate the policies of the Act. In the instant case while I did not find that the Respondent's unfair labor practices warranted the imposition of a bargaining order herein, I still consider some of the Respondent's conduct serious enough in nature to recommend such additional affirmative action.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all the parties participated, the National Labor Relations Board has found that we have violated the National Labor Relations Act. We have been ordered to both post and mail this notice and to abide by its terms.

The National Labor Relations Act gives all employees these rights:

- To engage in self-organization
- To form, join, or help unions
- To bargain collectively through a representative of their own choosing
- To act together for collective bargaining or other mutual aid or protection
- To refrain from any or all these things.

WE WILL NOT do anything that interferes with, restrains, or coerces you with respect to these rights.

WE WILL NOT coercively interrogate you concerning your union activities and sympathies.

WE WILL NOT solicit you to ascertain and divulge the union activities of other employees.

WE WILL NOT threaten you with plant closure, criminal or civil legal action, bodily harm or violence to you or your families, reduction of work hours and adding those hours to other employees if you engage in union activities or support or become members of a union.

WE WILL NOT create among our employees the impression that their union activities are under surveillance.

WE WILL NOT prepare and circulate any petitions among you which seek the withdrawal of your support of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the National Labor Relations Act.

WALTER JACK AND DIXIE A. MACY D/B/A  
7-ELEVEN FOOD STORE